

(2) If it can be established that the conditions stated in FAR 33.105(d)(1)(i) and (ii) are present, the contracting officer shall prepare a D&F setting forth the circumstances. The D&F shall be concurred in by the cognizant OGC-BAL attorney before being executed by the PORA (not delegable).

(g) If an appeal is to be made by the Department regarding a final decision issued by the GSBGA, it shall be made by OGC-BAL.

[50 FR 23133, May 31, 1985, as amended at 50 FR 38004, Sept. 19, 1985; 56 FR 47003, Sept. 17, 1991]

333.106 Solicitation provision and contract clause.

(a) The provision at FAR 52.233-2, Service of Protest, shall be completed by entering the name and complete mailing address of the contracting officer.

[50 FR 23133, May 31, 1985, as amended at 50 FR 38004, Sept. 19, 1985]

Subpart 333.2—Disputes and Appeals

SOURCE: 53 FR 15563, May 2, 1988, unless otherwise noted.

333.203 Applicability.

(c) The Armed Services Board of Contract Appeals (ASBCA) has been designated by the Secretary as the authorized "Board" to hear and determine disputes for the Department.

333.209 Suspected fraudulent claims.

The contracting officer shall submit any instance of a contractor's suspected fraudulent claim to the Office of the Inspector General for investigation.

333.210 Contracting officer's authority.

The contracting officer shall refer a proposed final decision to the Office of General Counsel, Business and Administrative Law Division (OGC-BAL), or the Regional Attorney in the HHS regional office servicing the region in which the contracting officer is located, for advice as to the legal sufficiency and format before sending the final decision to the contractor. The

contracting officer shall provide OGC-BAL or the Regional Attorney with the pertinent documents with the submission of each proposed final decision.

333.211 Contracting officer's decision.

(a)(2) See 333.210.

(a)(4)(v) When using the paragraph in FAR 33.211(a)(4)(v), the contracting officer shall insert the words "Armed Services" before each mention of the term "Board of Contract Appeals".

(c)(2) The contracting officer does not have jurisdiction to consider a claim from the contractor over \$50,000, unless that claim has been certified.

(h) At any time within the period of appeal, the contracting officer may modify or withdraw his/her final decision. If an appeal from the final decision has been taken to the ASBCA, the contracting officer will forward his/her recommended action to OGC-BAL or the cognizant Regional Attorney with the supplement to the contract file which supports the recommended correction or amendment.

333.212 Contracting officer's duties upon appeal.

(a) Appeals shall be governed by the rules set forth in the "Rules of the Armed Services Board of Contract Appeals", or by the rules established by the U.S. Claims Court, as appropriate.

(b) OGC-BAL or the cognizant Regional Attorney is designated as the Government Trial Attorney to represent the Government in the defense of appeals before the ASBCA. A decision by the ASBCA will be transmitted by the Government Trial Attorney to the appropriate contracting officer for compliance in accordance with the ASBCA's decision.

(c) If an appeal is filed with the ASBCA, the contracting officer shall assemble a file within 30 days of receipt of an appeal, or advice that an appeal has been filed, that consists of all documents pertinent to the appeal, including:

(1) The decision and findings of fact from which the appeal is taken;

(2) The contract, including specifications and pertinent modifications, plans and drawings;